



AMNESTY INTERNATIONAL USA
ACTION FOR HUMAN RIGHTS. HOPE FOR HUMANITY.



December 18, 2008

President-elect Barack Obama
Transition Team Office
451 6th Street, NW
Washington, DC 20004

Dear President-elect Obama:

As heads of four prominent civil liberties and human rights organizations, we wish to convey our uniform position on the steps we believe should be taken once you fulfill your pledge to close the Guantánamo Bay prison camp.

Our groups firmly advocate an unqualified return to America's established system of justice for detaining and prosecuting suspects. We categorically oppose the creation of any other ad-hoc illegal detention system or "third way" that permits the executive branch to suspend due process and hold suspected terrorists without charge or trial, essentially moving Guantánamo on-shore.

As you know, the Geneva Conventions allow for the detention of enemy soldiers captured on the battlefield until the cessation of international armed conflict. But what is new – and altogether radical – is the notion that a wartime detention model can be applied to something as amorphous as a "war on terror" that lacks a definable enemy, geographical boundary, or the prospect of ending anytime soon. If a conflict exists everywhere and forever, empowering the government to detain combatants until the end of hostilities takes on a whole new and deeply disturbing meaning.

We are confident that when you take office, you will immediately set a date certain for closing Guantánamo. The new Justice Department should conduct a fresh review of all detainee records to determine whether there is legitimate evidence of criminal activity. Where there is not, detainees should be repatriated to their home countries for trial or release. If there is a risk of torture or abuse in their home countries, they should be transferred to third countries that will accept them or admitted to the United States.

Where evidence of criminal activity does exist, detainees should be prosecuted in traditional federal courts. Contrary to the views of proponents of detention without trial who argue that America's existing courts can't handle terrorism prosecutions, the United States justice system has a long history of handling terrorism cases without compromising fundamental rights of defendants while accommodating sensitive national security issues. In fact, a recent analysis of more than 100 successfully prosecuted international terrorism cases conducted by two former federal prosecutors for Human Rights First found that "the justice system ... continues to evolve to meet the challenge terrorism cases pose." Our courts have proven that they can handle sensitive evidence. The Classified Information Procedures Act (CIPA) outlines a comprehensive set of procedures for federal criminal cases involving classified information. Applying CIPA over the years, courts have successfully balanced the need to protect national security information, including the sources and means of intelligence gathering, with defendants' fair trial rights.

Some have argued that the best way to deal with the toughest cases at Guantánamo would be to establish what amounts to another unconstitutional detention system once the island prison camp is shut down. The proponents of this school of thought claim that there are some detainees who are too dangerous to be released but who cannot face criminal charges. This is mostly based on the assumptions that some detainees have committed crimes not covered by American law, that some cases rely on sensitive national security information that cannot be disclosed in open court, and that the evidence against some detainees would not be admissible in a regular court because it was coerced through torture or abuse.

But federal prosecutors have an imposing array of prosecutorial weapons at their disposal, including laws that criminalize conspiring or attempting to commit homicide, harboring or concealing terrorists, and providing “material support” to terrorist organizations. The government can secure a conviction for conspiracy by showing only an agreement to commit a crime against the United States and any overt act in furtherance of that agreement. If the government cannot meet that minimal burden of proof, it is difficult to see why it should continue to detain a suspect.

It is true that many of the statements obtained from detainees through abusive interrogation would not be admissible in a court of law. But the fact that the American justice system prohibits imprisonment on the basis of evidence tortured out of prisoners is one of its strengths, not a weakness; it’s why we call it a “justice system” in the first place. Moreover, one would hope that if a prisoner were as guilty or dangerous as claimed, the government would be able to gather enough admissible evidence to prove its case from untainted sources, such as computers or cell phones that were seized, conversations that were intercepted, or physical surveillance that was conducted.

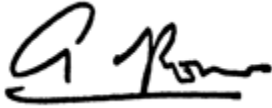
But most importantly, to create a whole new detention system and enact new legislation to accommodate the Bush administration’s shameful torture policies would be a legal and moral catastrophe. Even the most unequivocal repudiation of torture would be hollow if your administration were to construct another regime to hide its occurrence and evade its consequences.

The lessons from the military commissions debacle should be heeded. It is not possible to create a brand new system of justice from scratch in the United States without enduring years of litigation and controversy. Any new national court system or regime that allows detention without due process will be challenged, most likely all the way to the Supreme Court. In the meantime, there will be massive controversy and uncertainty about the fate of detainees caught up in it.

There’s no doubt the Bush administration’s abhorrent detention policies have left you, the American people and the entire world with a huge mess to clean up. At the same time, you have inherited a huge opportunity to lead America on its journey to regain its values and credibility. This cannot be done with half-steps. There’s no such thing as “sort of upholding our principles to

the extent possible.” We strongly urge you to uncompromisingly restore America’s role as a nation that stands for decency, justice and the rule of law.

With gratitude for your consideration in this matter,



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